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CORRESPONDENCE.

THE LATE GEN. JAMES A. WALKER ON HEARSAY EVIDENCE.

Editor Virginia Law Register:

I was once associated with General Walker in the defence of a man charged with rape.

The trial was in the county court before Judge William Kyle, of blessed memory, who has long since slept with his fathers.

The prosecutrix was a rather handsome woman, some thirty-five or forty years old, willowy in appearance, neatly dressed, sprightly and attractive. She went upon the witness stand and began to give her evidence, but after the first few words she seemed to break down under a spasm of weeping. She wept, and wept, and wept. Such anguish and mortification as she exhibited I had never before seen. The court room was crowded with people, and every eye in it was wet with tears save those of the prisoner and his counsel. She at last composed herself and went on with her story, but in a few minutes she again broke down, and her wails and anguish seemed more piteous than before, and again the court, the jury and the audience bowed their heads and wept.

Just when, in imagination, I could see the fatal rope dangling about the neck of my client, General Walker nudged me, and whispered, "Look at the d—d b—h; she is not shedding a tear." I took closer observation, and, sure enough, no tears escaped her eyes, notwithstanding she repeated her weeping several times.

Her story was that while her husband and children were at work in a distant field, and while she was at home alone, the prisoner came and made indecent overtures, which she refused and rejected; that he then seized her, and, by force and fright, accomplished his purpose.

She told this story, giving all its details, with great weight and effect before the jury. It seemed that there was no way to doubt the truthfulness of one word she said. But, as she went on further, there was this weak place in the case: she waited eleven days after the outrage was committed upon her before she disclosed it. She seemed to see this, and, without waiting to be questioned, began to explain her silence. She said she was afraid to tell her husband for fear he would kill the prisoner and would have to be hung for it; that she at once began praying to the Lord to make her duty in the premises clear; that she went to her church meeting (the Primitive Baptist) the following Saturday and Sunday, intending to reveal the crime to some of the church-members and take their advice, and her heart failed her, but that her prayers became more unremitting; that on the tenth day after the crime she felt better, and believed that the Lord would in some way reveal himself and remove her terrible burden; that she went to sleep that night and had a vision. Speaking of the vision, she raised her voice to a sort of ecstatic pitch, and said, "It was just as plain, just as plain; and I saw the Lord and his holy angels just as plain, just as plain; and they said to me just as plain, just as plain—" "Stop! Hold! We object!" exclaimed General Walker. Then arising to address the court, he said, "May it please your Honor, we object. What the Lord and his holy angels told this witness is hearsay. I do not mean to be irrev-

erent, sir, but it is hearsay, and cannot be admitted." He then went into some further discussion of the matter, in which he did not fail to call attention to the fact that the witness, in all her bitter weeping, had shed no tears. He was followed by the attorney for the commonwealth and by the late Judge J. W. Hackler, who was assisting the prosecution, and I closed the argument in favor of our objection.

My risibles were in a fearful state of mutiny at the time, but without any serious breach of decorum in addressing a learned court I quoted Greenleaf on Evidence, and contended that if the inhabitants of the upper skies were to be used as witnesses by the prosecution they must appear in court in the presence of the prisoner, and be sworn and subjected to cross-examination. The court promptly sustained our objection, and what the Lord and his holy angels told the woman was excluded.

General Walker, to the end of his life, was fond of relating this story to the brethren of the bar. He could mimic the prosecutrix almost to perfection, and he never tired laughing over it; but, being honest to his memory, I do not think he saw the grim humor of his objection until the trial was over and our client was promptly acquitted.

D. W. BOLEN.